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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Protecting human rights and fundamental freedoms while countering terrorism

Report of the Secretary-General

Summary

The General Assembly, in its resolution 70/148, reaffirmed that States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular international human rights, refugee and humanitarian law, and urged States, while countering terrorism, to fully comply with their obligations under international law. The present report is submitted pursuant to paragraph 27 of that resolution.

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I. Introduction

1. The present report was prepared pursuant to General Assembly resolution 70/148, adopted on 17 December 2015. In that resolution, the General Assembly reaffirmed that States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular human rights, refugee and humanitarian law. It welcomed the work of the United Nations High Commissioner for Human Rights to implement the mandate granted in 2005 by the Assembly in its resolution 60/158 and requested the High Commissioner to continue efforts in that regard. In addition, it took note with appreciation of the report of the Secretary-General on protecting human rights and fundamental freedoms while countering terrorism (A/70/271).

2. Also in resolution 70/148, the General Assembly expressed serious concern at the occurrence of violations of human rights and fundamental freedoms, as well as of international refugee and humanitarian law, committed in the context of countering terrorism and urged States to take a number of specific measures in order to comply fully with international law. In paragraph 27, it requested the Secretary-General to submit a report on the implementation of the resolution to the Human Rights Council and to the General Assembly at its seventy-second session. The present report covers the period since the last report of the Secretary-General (A/70/271) and includes relevant developments that took place between 1 July 2015 and 30 June 2017, with reference in particular to observations by bodies and mandate holders within the United Nations human rights system, which includes the Office of the United Nations High Commissioner for Human Rights (OHCHR), the Human Rights Council, special procedures mandate holders and human rights treaty bodies. Ongoing concerns are highlighted in relation to the undermining of respect for human rights in the context of countering terrorism, as reflected in resolution 70/148, and a number of recommendations are made on specific measures to be taken by Member States.

II. Human rights as a tool for prevention

3. Events during the reporting period have highlighted the serious challenges faced by States in preventing acts of terrorism and safeguarding the security of individuals within their jurisdiction. The scale and complexity of terrorism has evolved, as shown by the growth in the reach of terrorists and terrorist organizations and the changes in their modus operandi.[1] Civilians continue to suffer the dire consequences of armed conflict between States and non-State armed groups designated as terrorist, with a wide-reaching negative impact on the human rights of victims, their families and communities.[2] The burden on State authorities to prevent extremist violence and acts of terrorism and hold those responsible to account is significant, and the need for effective international and cross-border cooperation is greater than ever.[3]

4. Preventing violent extremism and countering terrorism is deeply rooted in the renewed focus of the United Nations on prevention[4] and on sustaining peace. In his address to the Human Rights Council in February 2017, the Secretary-General said

[1] See the fifth report of the Secretary-General on the threat posed by ISIL (Da'esh) to international peace and security and the range of United Nations efforts in support of Member States in countering the threat (S/2017/467).

[2] See A/HRC/34/30.

[3] See A/HRC/34/61.

[4] See www.un.org/sg/en/priorities/prevention.shtml.

that the best prevention tool is the Universal Declaration of Human Rights and the international treaties that derive from it. The rights set out in the Universal Declaration provide a framework for real-world solutions through real change on the ground.[5] The United Nations human rights system was developed in response to catastrophic violent conflict and was designed to address the very factors that drive violence, conflict and insecurity. Human rights thus possess inherent preventive power and, combined in a framework of universal, indivisible, interdependent and interrelated rights, they can be considered a powerful tool for conflict prevention. International and regional human rights mechanisms, which complement and support national processes for the prevention of human rights violations, can serve as both early warning mechanisms and important tools for accountability.

5. A focus on the prevention of human rights violations can also contribute directly to preventing violent extremism and countering terrorism by avoiding individual experiences of human rights violations, such as torture and other ill-treatment, or violations of due process rights, which have been identified as playing a role in an individual's path to radicalization.[6] As recognized in the Plan of Action to Prevent Violent Extremism, the creation of open, equitable, inclusive and pluralist societies, based on respect for human rights and with economic opportunities for all, represents the most tangible and meaningful alternative to the recruitment strategies of violent extremists, and the most promising strategy for rendering their efforts unattractive.[7] Research has also shown that societies that respect women's rights are less prone to violent extremism.[8]

6. At the same time, ensuring that measures to prevent violent extremism and counter terrorism are grounded in respect for human rights and the rule of law, through investment in institutions and processes that are accountable, effective and legitimate, can help to prevent new human rights violations. Legislation, policies and programmes must therefore be designed and implemented in a manner that complies with human rights standards to avoid the vicious circle in which the measures taken risk exacerbating the very phenomenon they are aimed at preventing.[9]

7. The international community has demonstrated its resolve to act together to address the rapidly evolving phenomenon of terrorism through a global, comprehensive approach by implementing the four pillars of the United Nations Global Counter-Terrorism Strategy (see General Assembly resolutions 60/288 and 70/291). The experience gained since the adoption of the Strategy in 2006 has reaffirmed the importance of the promotion and protection of human rights to effective counter-terrorism measures. Since 2003, the Security Council has adopted resolutions, in which it has consistently emphasized the need for States to promote and protect human rights while countering terrorism, and the General Assembly has committed explicitly and repeatedly, most recently through the review and reaffirmation of the Strategy in 2016, to ensure that respect for human rights and the rule of law remains the fundamental basis for the fight against terrorism.

[5] See www.un.org/sg/en/content/sg/speeches/2017-02-27/secretary-generals-human-rights-council-remarks.

[6] See A/70/674, para. 33; A/HRC/31/65, para. 32; and Human Rights Council resolution 30/15.

[7] A/70/674, para. 7; and A/HRC/33/29, para. 14.

[8] See global study on the implementation of Security Council resolution 1325 (2000), p. 222, available from http://wps.unwomen.org/pdf/en/GlobalStudy_EN_Web.pdf.

[9] A/HRC/33/29, para. 2.

III. Recent developments

8. Since he assumed office in January 2017, the Secretary-General has given priority to ensuring that the United Nations is best positioned to support Member States in their implementation of the Strategy in a balanced manner across its four pillars, on the basis of respect for human rights and the rule of law. In this context, the Secretary-General proposed the establishment of a dedicated Office of Counter-Terrorism with five core responsibilities, including enhancing coordination and coherence across the 38 entities of the Counter-Terrorism Implementation Task Force. In its resolution 71/291, adopted on 15 June 2017, the General Assembly supported that proposal, establishing the Office of Counter-Terrorism in accordance with the competencies and functions set out in the report concerning the capability of the United Nations system to assist Member States in implementing the Strategy (A/71/858), emphasizing the importance of implementing the Strategy in an integrated and balanced manner.

9. The establishment of the Office of Counter-Terrorism presents an opportunity for the United Nations to step up the support it provides to Member States to ensure that respect for human rights for all and the rule of law is the fundamental basis for preventing violent extremism and countering terrorism. Through its coordination role and in close cooperation with member entities of the Counter-Terrorism Implementation Task Force, notably OHCHR, the Office of Counter-Terrorism will enhance the assistance provided by the United Nations to Member States to ensure that relevant legislation, policies and practices are grounded firmly in respect for human rights. The Office of Counter-Terrorism will also increase efforts to mainstream human rights across the work of the working groups of the Task Force and seek to further strengthen existing engagement and develop, where necessary, new partnerships with OHCHR as well as relevant mandate holders of the Human Rights Council and human rights treaty bodies, and to encourage follow-up to the recommendations of these mandate holders and bodies. The United Nations stands ready to assist Member States further in their efforts to ensure that all measures aimed at preventing and countering violent extremism fully respect human rights.

10. The increasing priority afforded to countering terrorism at the United Nations, including through support to operations that involve the use of force, also highlights the need for a more systematic application of the human rights due diligence policy in order to identify the risks involved in providing such support, as well as to offer practical solutions for mitigating the risks. The monitoring element of the policy could also provide a tool to assist in evaluating the impact of prevention efforts in these contexts.

11. Those efforts will capitalize on the work of the United Nations human rights system, including OHCHR and its field offices, the Human Rights Council, special procedures mandate holders and human rights treaty bodies. They will also build on the work of the United Nations Counter-Terrorism Centre, now the capacity-building arm of the Office of Counter-Terrorism, as well as the Counter-Terrorism Implementation Task Force, the United Nations Office on Drugs and Crime (UNODC), the Counter-Terrorism Committee Executive Directorate and other member entities. The Task Force Working Group on Promoting and Protecting Human Rights and the Rule of Law while Countering Terrorism, for example, has moved forward with delivery of its global human rights capacity-building project for law enforcement, to support the integration of human rights in the counter-terrorism initiatives of security and law enforcement officials, as well as through their cross-border and regional cooperation. Training sessions and engagement with senior government officials have taken place in Jordan, Iraq, Mali, Nigeria and Tunisia, with further plans to support States in the Sahel. UNODC is also working

with criminal justice authorities and police and judiciary training institutions in numerous States, particularly in Africa and the Middle East, to assist them in strengthening respect for human rights in the investigation and prosecution of terrorism cases, including through the training of national trainers and the development of tailor-made national training materials. Furthermore, UNODC and OHCHR are implementing a joint capacity-building initiative for officials and civil society representatives in countries in the Lake Chad Basin region, including the development of guidance materials and the delivery of training on mainstreaming a gender perspective and women's rights in the investigation and prosecution of offences by terrorist groups, as well as in the support provided to victims.

12. The Counter-Terrorism Committee and its Executive Directorate have continued to address relevant issues relating to human rights and the rule of law in their assessment of Member States' efforts to implement Security Council resolutions 1373 (2001), 1624 (2005) and 2178 (2014) and in their recommendations for technical assistance. Human rights issues are addressed in thematic reports prepared by the Committee and the Executive Directorate[10] and in the global surveys on the implementation by Member States of Security Council resolutions 1373 (2001) and 1624 (2005),[11] and are taken into account in the Committee's special meetings, such as the special meeting on stemming the flow of foreign terrorist fighters, held in Madrid on 28 July 2015.[12] Senior United Nations human rights officials and special rapporteurs have also participated in the Committee's meetings, such as the meeting on preventing the exploitation of information and communications technologies for terrorist purposes while respecting human rights and fundamental freedoms, which was held on 1 December 2016.

IV. Human rights considerations

13. The Global Counter-Terrorism Strategy, as reaffirmed and updated by the General Assembly in its resolution 70/291, provides the blueprint for a comprehensive, strategic and long-term response to terrorism that is grounded in respect for human rights and the rule of law. The United Nations has addressed the wide-ranging implications for human rights of security-related policies and practices, representing an invaluable resource for risk analysis, early warning and technical cooperation, and can provide practical guidance for States and other duty-bearers in the implementation of the Strategy.

14. In the period covered by the present report, the Security Council, the Human Rights Council, the High Commissioner for Human Rights and the Secretary-General have condemned acts of terrorism that have been committed in countries worldwide, underscoring the devastating consequences for victims and the negative effects of such acts of violence on the enjoyment of human rights.[13] The United Nations human rights system has also addressed serious violations and abuses of international humanitarian law and international human rights law in situations where terrorist groups have been active and provided recommendations on measures to ensure accountability and counter impunity.[14] These and other challenges in the counter-terrorism context where legislation, policies and practices have undermined the protections afforded under international human rights law have been highlighted notably by the General Assembly, the Human Rights Council and the High

[10] See, for example, S/2015/683; and S/2015/975.
[11] See S/2016/49; and S/2016/50.
[12] See S/2015/939.
[13] See, for example, A/HRC/34/30; and Human Rights Council resolution 35/34.
[14] See, for example, A/HRC/34/64; A/HRC/33/55; A/HRC/32/CRP.2; and A/HRC/31/CRP.3.

Commissioner for Human Rights.[15] In its resolution 70/291 on the review of the Global Counter-Terrorism Strategy, the General Assembly expressed serious concern at the occurrence of violations of human rights and fundamental freedoms committed in the context of countering terrorism and stressed that, when counter-terrorism efforts neglected the rule of law and violated international law, they not only betrayed the values they sought to uphold, but they might also further fuel violent extremism that could be conducive to terrorism.

15. The following sections address the human rights issues reflected in resolution 70/148, with reference to the analysis and recommendations made by various mandate holders within the United Nations human rights system during the reporting period. These issues include the need for measures to ensure accountability and combat impunity in the context of countering terrorism; respect for the rights of victims; conformity of national legislation with international law, including human rights law; compliance of surveillance measures with international law; due process, including the right to a fair trial; and standards relating to detention, including the prohibition of torture.

A. Ensuring accountability and combating impunity

16. The duty to ensure compliance with, and prevent violations of, international human rights law applies to counter-terrorism policies, legislation and practices, subject only to lawful derogation from, or limitation to, specific rights as provided for under international human rights law. In this regard, in paragraph 8 of its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, the Human Rights Committee stated that the positive obligations on State Parties to ensure the rights enshrined in the International Covenant on Civil and Political Rights will be fully discharged only if individuals are protected by the State, not just against violations of those rights by State agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights insofar as they are amenable to application between private persons or entities. The Human Rights Committee is in the process of drafting a new general comment on article 6 of the International Covenant on Civil and Political Rights. According to the draft, States parties are under a due diligence obligation to take reasonable positive measures, which do not impose on them impossible or disproportionate burdens, in response to foreseeable threats to life originating from private persons or entities whose conduct is not attributable to the State. States are therefore obliged to take adequate preventive measures in order to protect individuals against being murdered or killed by criminals or organized crime or militia groups, including armed or terrorist groups.

17. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has noted that individuals suspected of having engaged in the incitement, preparation, instigation or commission of acts of terrorism should be duly investigated and, if appropriate, prosecuted, and has stated that all acts of terrorism should be categorized as ordinary crimes and dealt with within the legal and institutional framework of ordinary criminal law.[16] The guarantees of due process should be respected when persons who are alleged to have committed terrorism-related offences are arrested, charged, detained and prosecuted. Such guarantees are essential to ensuring that

[15] General Assembly resolution 70/148; A/HRC/34/30; and Human Rights Council resolution 35/34.
[16] A/HRC/20/14, paras. 24, 34 and 67 (b).

those responsible are held to account, that justice is done and that victims have access to an effective remedy.[17]

18. States must also ensure accountability for any gross or serious violations of international human rights law and international humanitarian law, including those that take place in the context of countering terrorism. The lack of accountability for serious violations of international human rights law in the counter-terrorism context has been highlighted with concern by United Nations human rights bodies and mandate holders.[18] In particular, States should ensure that action is taken so that violations and abuses are prevented and/or not repeated, to promptly, thoroughly, independently and impartially investigate allegations of such violations and abuses, to punish perpetrators and to ensure access to remedy and redress for victims.

19. The Special Rapporteur on extrajudicial, summary or arbitrary executions has noted that the framing of conflicts as anti-terrorism operations has, in some cases, contributed to confusion among stakeholders about what domestic and international legislation applies and who within the government is responsible for the use of force, which can, in turn, create uncertainty with regard to accountability and how it should be achieved.[19]

20. In situations of armed conflict, members of non-State armed groups are also obliged to respect applicable rules of international humanitarian law. Serious violations of international humanitarian law may amount to war crimes, engaging the individual criminal responsibility of those responsible. In its resolution 2349 (2017), which was adopted unanimously, the Security Council strongly condemned all terrorist attacks, violations of international humanitarian law and abuses of human rights by Boko Haram and Islamic State in Iraq and the Levant (ISIL/Da'esh) in the Lake Chad Basin region and called for those responsible to be held to account and brought to justice. At the request of the Human Rights Council, OHCHR has documented in detail and reported on gross human rights abuses and serious violations of international humanitarian law committed by Boko Haram, as well as violations of international human rights law and international humanitarian law allegedly committed by government security forces during counter-insurgency operations, with a view to ensuring accountability.[20] A joint visit of special procedures mandate holders was undertaken to Nigeria in January 2016 in order to examine measures taken by the Government and other actors to rehabilitate and reintegrate the women and children who escaped or were liberated from captivity at the hands of Boko Haram. In their joint report, the Special Rapporteurs identified serious abuses of the human rights of women and children and violations of international humanitarian law and outlined recommendations to the Government and other actors, including measures to address the significant gap in accountability for crimes perpetrated in the context of the insurgency.[21]

21. Deliberate and calculated abuses, violations and crimes committed by ISIL have been documented extensively by the Independent International Commission of Inquiry on the Syrian Arab Republic and by the United Nations Assistance Mission for Iraq and OHCHR, which have noted when violations and abuses may amount to

[17] Working Group on Promoting and Protecting Human Rights and the Rule of Law while Countering Terrorism, "Basic human rights reference guide: right to a fair trial and due process in the context of countering terrorism".

[18] See, for example, A/HRC/34/61; and A/HRC/28/28.

[19] A/HRC/32/39/Add.1, para. 24. See also A/HRC/28/38, and global study on the implementation of Security Council resolution 1325 (2000), chap. 9, available from http://wps.unwomen.org/pdf/en/GlobalStudy_EN_Web.pdf.

[20] See A/HRC/30/67.

[21] See A/HRC/32/32/Add.2.

war crimes, crimes against humanity and acts of genocide.[22] In a report produced in 2016 on crimes committed by ISIL against the Yazidis, the Commission of Inquiry found that the conduct of ISIL constituted serious abuses of international human rights law, including the prohibition against slavery, and that the sexual and physical violence, together with the severe mental trauma, that Yazidi women and girls had experienced at the hands of ISIL had risen to the level of torture, causing them serious physical and psychological harm.[23] On 21 December 2016, the General Assembly adopted resolution 71/248, in which it decided to establish the International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011.

B. Ensuring respect for the human rights of victims

22. Member States have highlighted the importance of ensuring respect for the human rights of victims of terrorism to reparation, truth and justice, as well as their right to live free from fear and be provided with the support they require. The General Assembly, in its resolution 70/291, expressed its profound solidarity with victims and their families and encouraged Member States to provide them with proper support and assistance; and, the Human Rights Council, in its resolution 35/34, underscored that protecting the rights of victims of terrorism required providing them with proper support and assistance, while respecting, inter alia, considerations regarding remembrance, dignity, respect, accountability, justice and truth, in accordance with international law.

23. The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (General Assembly resolution 40/34, annex) outlines the minimum standards for the fair treatment of victims according to the basic principles of justice. Victims should be treated with compassion and respect for their dignity; be informed of their rights in seeking redress; have their views and concerns presented in legal proceedings; receive proper assistance throughout the legal process; be protected against intimidation and retaliation; have their privacy protected; be offered the opportunity to participate in informal mechanisms for the resolution of disputes, including mediation; enjoy restitution and compensation, as appropriate; and receive the necessary material, medical, psychological and social assistance. Those elements are crucial to ensuring respect for their dignity, whether the abuse to which they have been subjected is at the hands of a State or non-State actor.

24. The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (General Assembly resolution 60/147, annex) also underscore that victims should be treated with humanity and respect for their dignity and human rights, and emphasize that appropriate measures should be taken to protect their safety, physical and psychological well-being and privacy, as well as those of their families.

25. States should consider sharing lessons learned and good practices in this regard, including with respect to national legislation, compensation, rehabilitation and assistance schemes and studies in order to better protect and promote the human rights of victims. In February 2016, the United Nations Counter-Terrorism Centre,

[22] See A/HRC/34/CRP.3; A/HRC/34/64; A/HRC/32/CRP.2; and www.ohchr.org/Documents/Countries/IQ/UNAMIReport12Aug2016_en.pdf.

[23] A/HRC/32/CRP.2, para. 130; see also global study on the implementation of Security Council resolution 1325 (2000), chap. 9, available from http://wps.unwomen.org/pdf/en/GlobalStudy_EN_Web.pdf.

under the auspices of the Task Force Working Group on Supporting and Highlighting Victims of Terrorism,[24] organized a high-level conference to examine how States could strengthen their national legislation, procedures and practices to better respect the human rights of victims of terrorism, drawing upon the framework principles for securing the human rights of victims of terrorism, developed by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.[25] The Task Force Working Group on Promoting and Protecting Human Rights and the Rule of Law while Countering Terrorism has highlighted the need for States to establish national systems of assistance to promote the needs of victims of terrorism and their families, stressing that victims of terrorism who have suffered violations of their rights are entitled to material, legal and psychological assistance.[26]

C. Impact of national legislation

26. The General Assembly has underlined the importance of ensuring that national legislation criminalizing acts of terrorism is accessible, formulated with precision, non-discriminatory, non-retroactive and in accordance with international law, including international human rights law (resolution 70/148, para. 6 (o)). Defining acts of terrorism in domestic criminal legislation in line with the principle of legality is recognized as one critical step towards prevention and towards ensuring that those responsible are brought to justice. Ensuring that counter-terrorism legislation and policy comply with international legal standards helps to promote the prosecution and conviction of individuals engaged in acts of terrorism. When States take steps to ensure that national counter-terrorism legislation is specific, necessary, effective and proportionate, this facilitates international cooperation and ultimately leads to more successful criminal justice outcomes. It also helps to prevent the abusive enforcement of the law and ensure accountability of the State authorities that are responsible for law enforcement.[27]

27. In a climate of growing insecurity, many States have either maintained legislation or enacted new laws that provide for an overly broad definition of terrorism that is susceptible to wide interpretation, increasing the risk of abuse by law enforcement and other officials.[28] Criminal legislation that does not define the nature and consequences of the acts concerned, or that includes broad and imprecise definitions of terrorist incidents or terrorist acts, would contravene international law, in particular the principle of legality as reflected in the International Covenant on Civil and Political Rights.[29] In addition, some legislative processes have not given adequate consideration to or provided enough time for public engagement, allowing for accelerated adoption without taking into account the views of civil society.[30] Concerns have also been raised in relation to the invocation and/or

[24] The Working Group works to promote victims' rights and provide support services and access to critical information, for example, through the United Nations Victims of Terrorism Support Portal.

[25] See A/HRC/20/14. See also UNODC, "Good practices in supporting victims of terrorism within the criminal justice framework".

[26] Working Group on Promoting and Protecting Human Rights and the Rule of Law while Countering Terrorism, "Basic human rights reference guide: conformity of national counter-terrorism legislation with international human rights law".

[27] See A/HRC/28/28. See also Working Group on Promoting and Protecting Human Rights and the Rule of Law while Countering Terrorism, "Basic human rights reference guide: conformity of national counter-terrorism legislation with international human rights law".

[28] "Brazil anti-terrorism law too broad, UN experts warn", 4 November 2015, available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16709.

[29] See, for example, CCPR/C/POL/CO/7; and CAT/C/CHN/CO/5.

[30] A/71/373, paras. 14 and 15.

repeated renewal of states of emergency in the context of countering terrorism, as well as legislation enacted in this context.[31]

28. In paragraph 46 of its general comment No. 34 (2011) on the freedoms of opinion and expression, the Human Rights Committee specifies that offences such as the "encouragement of terrorism" and "extremist activity" or "praising", "glorifying" or "justifying" terrorism should be clearly defined to ensure that they do not lead to unnecessary or disproportionate interference with freedom of expression. In this regard, concerns have been raised over broadly formulated legislation that criminalizes "obscene, gory or offensive material which is likely to cause fear and alarm to the general public" or the "glorification of terrorism".[32] In a similar vein, concerns have been raised over national criminal legislation that incorporates broadly conceived concepts of "extremism", "violent extremism", "breach of national dignity", "inciting social or class hatred", "religious hatred or enmity", "politically motivated action which is designed to influence a government or international organization" and threats to the "economic or financial stability" of the State.[33] Concern has been expressed with regard to the broad application of counter-terrorism legislation with respect to children and to women who do not conform to traditional gender roles or who fail to report the activities of their husbands suspected of terrorism.[34]

29. Challenges have been identified in cases when counter-terrorism legislation has been used to justify the repression of peaceful protest and assembly; target, detain and arrest journalists, lawyers, human rights defenders, minorities and indigenous peoples; and restrict the activities of civil society.[35] Vague definitions in national legislation of the term "terrorist", including the charge of "harming relations with a foreign country" and the existence of restrictive provisions on the freedom of the media have had a serious impact on the work of journalists, many of whom have reportedly been subject to arbitrary detention in the absence of procedural guarantees.[36] The misuse of national security and counter-terrorism legislation to protect business interests, to the detriment of civil society groups exercising their rights to peaceful assembly and association, has also been raised with concern in relation to the actions of authorities in some States.[37] The High Commissioner for Human Rights has expressed alarm over the impact of counter-terrorism measures on freedom of expression and association, which threaten to wipe out dissent completely and close what is left of democratic space in some countries.[38]

30. Contrary to the international trend towards the progressive abolition of the death penalty, many Governments have retained or expanded the death penalty for

[31] See, for example, A/HRC/34/52/Add.1; A/HRC/30/42; and CCPR/C/UZB/CO/4.

[32] See A/71/373; and A/HRC/35/41.

[33] See, for example, CCPR/C/KAZ/CO/2, paras. 13-14; A/71/373, para. 23; A/HRC/31/65, para. 27; A/HRC/32/36, para. 34; CCPR/C/GBR/CO/7; and A/HRC/33/29, paras. 16-24.

[34] A/HRC/34/30, para. 24; and CCPR/C/IRQ/CO/5, para. 9.

[35] See, for example, A/HRC/34/52/Add.1; A/HRC/31/55; A/HRC/31/55/Add.1; A/70/217; A/HRC/32/36; and A/HRC/32/36/Add.3. See also "Saudi Arabia must reform counter-terror law and free peaceful critics, says UN rights expert", 5 May 2017, available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21585&LangID=E; and "Rights defenders 'must not be silenced', says UN office, urging Turkey to release activists", 7 July 2017, available from www.un.org/apps/news/story.asp?NewsID=57134#.WWjBGYSGPct.

[36] A/71/373, para. 36; and CAT/C/CHN/CO/5.

[37] See A/70/266.

[38] See "Is international human rights law under threat?" Grotius Lecture at the Law Society, London, 26 June 2017, available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21803&LangID=E; and "UN expert raises alarm at global trend of restricting civil society space on pretext of national security and counter-terrorism", 26 October 2015, available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16653&LangID=E.

terrorism-related offences or resumed executions for terrorism-related offences after years of moratoriums on executions. The mandatory application of the death penalty for a wide range of activities defined in legislation as terrorist acts has also been raised as an issue of concern.[39] United Nations human rights mechanisms have underlined that the application of the death penalty for overly broad and vaguely defined terrorist offences remains a source of serious concern, particularly when such acts do not meet the threshold of "most serious crimes", and could result in the violation of article 6 of the International Covenant on Civil and Political Rights.[40] The Special Rapporteur on extrajudicial, summary or arbitrary executions has emphasized that many anti-terrorism laws discriminate against religious minorities in practice and that in some cases this has resulted in executions. United Nations human rights mechanisms have underlined that executions carried out without adherence to the strictest guarantees of due process are unlawful and tantamount to arbitrary execution.[41]

31. The General Assembly has repeatedly reaffirmed that terrorism cannot and should not be associated with any religion, nationality, civilization or ethnic group and has urged States to ensure that counter-terrorism measures are not discriminatory and do not resort to profiling based on stereotypes (resolutions 68/178, 70/148 and 71/291). The disproportionate and discriminatory impact of counter-terrorism legislation on ethnic and religious minorities in many countries has been highlighted, including the serious consequences in cases of arbitrary arrest, detention and prosecution.[42] The ambiguity of terms such as "terrorism" and "extremism" has reportedly created a wide scope of interpretation and has led to increased profiling of people on the basis of their ethnicity and/or religion.[43] The negative portrayal and stereotyping in many States, including by the media and political leaders, of ethnic or religious minority communities, immigrants, asylum seekers and refugees, particularly in the aftermath of terrorist attacks, has reportedly fuelled divisions and encouraged prejudice and discrimination against vulnerable individuals and communities.[44]

32. The creation of a statutory "prevent duty", which requires public authorities in a broad range of fields to have due regard for the need to prevent individuals from being drawn into terrorism, has reportedly created an atmosphere of suspicion particularly towards members of Muslim communities. It has also had a negative impact on the rights to freedom of expression, religion and education where there is uncertainty as to what may legitimately be discussed or worn in educational settings.[45] For instance, the Special Rapporteur on the rights to freedom of peaceful assembly and of association noted that some families, with the spectre of "Big Brother" in mind, were afraid of even discussing the negative effects of terrorism in

[39] CCPR/C/IRQ/CO/5, para. 9.

[40] A/71/332, para. 33; and A/HRC/33/20, para. 16. See also "Egypt must halt executions of six men sentenced after unfair trials — UN experts", 22 June 2017, available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21791&LangID=E.

[41] See "'The death penalty should not be used as a deterrent for terrorism' — UN rights experts warn", 7 October 2016, available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20659&; and statement by the Special Rapporteur on extrajudicial, summary or arbitrary executions at the launch of the parliamentary fact sheet on the death penalty and terrorism-related offences, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20800&LangID=E.

[42] See, for example, CERD/C/UKA/CO/10-17; CERD/C/TUR/CO/4-6; and CCPR/C/UZB/CO/4.

[43] See, for example, CERD/C/GBR/CO/21-23; CERD/C/TUR/CO/4-6; and CERD/C/FRA/CO/20-21.

[44] See, for example, A/HRC/34/50/Add.1; A/HRC/34/53; A/HRC/34/53/Add.2; A/HRC/34/53/Add.3; A/HRC/35/41; A/HRC/35/41/Add.1; and CERD/C/GBR/CO/21-23. See also "States urged by UN experts to act now against racial profiling and incitement to racial hatred", 21 March 2017, available from www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=21416&LangID=E.

[45] See, for example, CERD/C/GBR/CO/21-23; CRC/C/GBR/CO/5; and A/HRC/35/28/Add.1.

their own homes, fearing that their children would talk about it at school and have their intentions misconstrued.[46]

33. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has underlined that a comprehensive migration policy that respects human rights, justice, accountability, human dignity, equality and non-discrimination and that grants victims of terrorism the protection to which they are entitled is also an essential part of an effective counter-terrorism policy.[47] Concerns have been raised, however, in relation to the enactment of measures designed to restrict or deny the entry of asylum seekers, as well as of restrictive immigration legislation and policies, often presented as a counter-terrorism measure.[48] The Special Rapporteur has highlighted that asylum and migration policies that are restrictive or that violate human rights can have a counterproductive effect on the efforts of States to counter terrorism by creating more irregular migration and increasing violations of the human rights of migrants and refugees, marginalizing particular communities and reducing prospects for migrants, all of which could become conditions conducive to terrorism.[49] Moreover, measures to ensure the safety and protection of those in need, including those fleeing terror, can help to safeguard the security of transit and host countries and communities.[50]

D. Surveillance

34. In the counter-terrorism context, surveillance of electronic communications data can be a necessary and effective measure for legitimate law enforcement or intelligence purposes. There are concerns, however, about the overreach of digital communications surveillance programmes implemented by Governments and their potential human rights impact, including arbitrary or unlawful interference in the right to privacy.[51] Concerns have been expressed over invasive and transnational surveillance practices, as well as the collection and storage of personal data arising from digital communication, which have been facilitated through the use of new technologies. The enactment and implementation of digital surveillance legislation, which imposes excessive and disproportionate restrictions on the legitimate exercise of the rights to freedom of expression, peaceful assembly and association and the right to privacy, in particular, and which lacks in clarity and precision, has also been underlined with concern.[52]

35. Digital surveillance has been used unlawfully by some States to target political opponents and to monitor, collect and access bulk information on specific individuals and communities.[53] Such practices, whether they involve the bulk

[46] A/HRC/35/28/Add.1, para. 13.

[47] A/71/384, paras. 54 and 55.

[48] See A/HRC/32/50; and A/HRC/33/51.

[49] A/71/384, para. 53.

[50] Office of the United Nations High Commissioner for Refugees (UNHCR), open briefing to the Counter-Terrorism Committee, 5 April 2017, available from www.unhcr.org/admin/dipstatements/58e35b317/open-briefing-united-nations-security-council-counter-terrorism-committee.html.

[51] See, for example, Human Rights Council resolution 34/7; General Assembly resolution 71/199; A/71/373; A/HRC/34/61; A/HRC/31/64; CCPR/C/ITA/CO/6; CCPR/C/CAN/CO/6; CCPR/C/POL/CO/7; CCPR/C/FRA/CO/5; CCPR/C/GBR/CO/7; A/HRC/31/14; A/HRC/31/12; A/HRC/30/12; and A/HRC/29/15.

[52] See A/70/361; A/HRC/31/64; A/HRC/34/61; A/HRC/29/32; and A/HRC/32/38. See also "UN rights experts urge France to protect fundamental freedoms while countering terrorism", Geneva, 19 January 2016, available from www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16966&LangID=E#sthash.NSGkSF7m.dpuf.

[53] See A/71/373; and A/HRC/27/37.

collection of data or the targeting of individual communications, may infringe not only the right to privacy but also the right to freedom of opinion and expression and other human rights. Following his mission to Mexico from 16 to 24 January 2017, the Special Rapporteur on the situation of human rights defenders expressed concern over the new and sophisticated techniques of intimidation being used to discourage or impede human rights work.[54] Journalists and defenders working on freedom of expression, impunity and corruption have reported cases of digital surveillance and attacks related to cybercrime, including malicious software and denial of service attacks. Measures that allow for the unlimited and indiscriminate surveillance of communication and collection of metadata, as well as the targeting of foreign nationals and application of different legal criteria to them, have also been identified as infringing human rights.[55]

36. The Special Rapporteur on the protection and promotion of human rights and fundamental freedoms while countering terrorism has highlighted that further progress is required to ensure that adequate procedural safeguards and oversight of interception and surveillance are in place and that prior judicial authorization of surveillance should be the norm.[56] While the sharing of information between law enforcement and intelligence agencies in different jurisdictions is an essential tool for prevention, there are additional risks to human rights that must be addressed, including issues related to the collection and processing of digital evidence. In this regard, accountability gaps can be addressed through checks and balances, for example, through the extension of external oversight, in order to ensure that cooperation between law enforcement, investigative officials and intelligence services does not result in a weakening of human rights protection.

E. Due process, including the right to a fair trial

37. Bringing those suspected of terrorist acts to justice poses significant challenges in many countries. Not only are there security risks involved in the prosecution of terrorist cases, but also there are challenges associated with the collection and use of evidence in accordance with international standards. Nevertheless, systems that have developed processes for evidence collection, witness protection and similar measures that are respectful of human rights have been better able to successfully bring perpetrators to justice. In this regard, the General Assembly, in its resolution 70/148, and the Human Rights Council, in its resolution 35/34, have urged States to take a range of specific measures to ensure the fulfilment of due process guarantees as enshrined in international law. These include recognition of the right of an individual to know why he or she has been detained; the right of the family of a detainee to know where he or she is being held; and the right of a detainee to have access to a lawyer and to challenge the lawfulness of his or her detention.[57] In many jurisdictions, however, respect for those rights is neither fully acknowledged nor respected in practice.[58]

[54] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21111&LangID=E#sthash.u3KkdMu5.dpuf; and Human Rights Council resolution 33/2.

[55] A/HRC/34/61, para. 33; and CCPR/C/POL/CO/7, para. 39.

[56] A/HRC/34/61. See also CCPR/C/GBR/CO/7, para. 24 (c); and CCPR/C/CAN/CO/6, para. 10.

[57] Working Group on Promoting and Protecting Human Rights and the Rule of Law while Countering Terrorism, "Basic human rights reference guide: right to a fair trial and due process in the context of countering terrorism".

[58] A/HRC/34/30, paras. 29-31. See also CERD/C/TUR/CO/4-6; CCPR/C/FRA/CO/5; CCPR/C/MAR/CO/6; CCPR/C/UZB/CO/4; CAT/C/JOR/CO/3; CCPR/C/SUR/CO/3; CCPR/C/GBR/CO/7; CAT/C/CHN/CO/5; and CCPR/C/IRQ/CO/5.

38. The principle of the right to be presumed innocent until proved guilty according to law, and to be treated accordingly, a fundamental tenet of criminal law as recognized in the International Covenant on Civil and Political Rights, places the burden of proof on the prosecution to establish the guilt of the defendant beyond reasonable doubt. This principle has been challenged in many States where broad counter-terrorism legislation has been applied to individuals accused, in many cases on spurious grounds, of terrorist activity.[59]

39. Practices that limit the right of access to legal counsel for persons accused of terrorist activity have been addressed with concern by United Nations human rights treaty bodies. Such practices include provisions that allow a prosecutor or court to order the extended, incommunicado detention of an individual without legal representation in cases of terrorism or drug trafficking; permit the blanket denial of bail to persons arrested under counter-terrorism provisions; delay access to legal counsel for the accused; require a lawyer to obtain permission from public security investigators to meet with the suspect in cases of "endangering State security", "terrorism" or serious "bribery" and allow permission to be withheld indefinitely if the investigators believe the meeting could hinder their investigation or result in disclosure of State secrets; and allow investigators to refuse to notify family members of an individual's detention.[60] The Working Group on Enforced or Involuntary Disappearances has reported that the number of enforced disappearances is rising globally, as a result of high-handed security measures in places where the State is under the false and pernicious belief that they are a useful tool to preserve national security and combat terrorism or organized crime.[61]

40. The principle of equality of arms, which is critical to ensure respect for the right to a fair trial in the counter-terrorism context, has also been challenged, for example, when national security is invoked as a rationale to prevent disclosure of information or when intelligence information is introduced as evidence.[62] Legislation introducing a no-fly list programme without a clear procedure to inform the persons concerned of their status, as well as for judicial review that may be conducted in secret, also challenges the right of affected individuals to due process.[63]

41. Faced with the serious threat posed by terrorist groups, including ISIL, States have taken a wide range of administrative and legislative measures, under the scope of Security Council resolution 2178 (2014), to deter individuals who are or who seek to become foreign fighters, such as blocking the validity of travel documents, revoking citizenship, freezing financial assets and prosecuting individuals for acts ranging from recruitment and incitement to the planning of terrorist acts.[64] However, such measures may have a negative impact on the right to due process, including the right to presumption of innocence; the right to freedom of movement and to be protected against arbitrary deprivation of nationality; the rights to freedom of religion, belief, opinion, expression and association; and the right to protection against arbitrary or unlawful interference in privacy.[65] Situations in which decisions are taken following secretive proceedings, in absentia, on the basis of vaguely defined criteria or without adequate procedural safeguards to guarantee

[59] See, for example, CERD/C/TUR/CO/4-6; CCPR/C/MAR/CO/6; CCPR/C/UZB/CO/4; and CAT/C/JOR/CO/3.

[60] See, for example, CCPR/C/SUR/CO/3; CCPR/C/GBR/CO/7; CAT/C/CHN/CO/5; and CCPR/C/FRA/CO/5.

[61] A/HRC/33/51, para. 110; and A/HRC/30/38, para. 97.

[62] See A/HRC/34/61.

[63] CCPR/C/CAN/CO/6, para. 10.

[64] See A/HRC/28/28.

[65] See A/71/384; A/70/330; A/HRC/33/43/Add.1, 2, 3 and 4.

non-arbitrariness are particularly disconcerting.[66] The detention of suspected foreign fighters without respect for the safeguards that are due under international law to all persons deprived of their liberty, in particular the extension of the length of permissible pre-charge detention without judicial supervision or review of the reasons of detention, has also been raised as an issue of concern.[67] The introduction of temporary exclusion orders and the use of citizenship deprivation orders in the context of terrorism, as well as the possibility of individuals being rendered stateless as a result of such measures, have also been raised as matters of concern.[68]

F. Detention and the prohibition of torture

42. In its general comment No. 35 (2014) on liberty and security of person, the Human Rights Committee highlighted the absolute nature of the prohibition of arbitrary detention, as reflected in article 9 of the International Covenant on Civil and Political Rights, noting that administrative detention raises a severe risk of arbitrary deprivation of liberty and should be employed only in exceptional circumstances, when a present, direct and imperative threat justifies its use, and for a limited time. Concerns have been raised over legislation and practice in some jurisdictions, however, which allow for various forms of preventive or pre-trial detention without appropriate safeguards, including by extending the permissible period of pre-charge detention for persons suspected of terrorist activity and the length of time a person may be held without judicial authorization or review of the reasons for detention.[69] As a result, individuals accused of terrorist activity have been held for prolonged periods without charge or trial, in some cases without proper access to legal counsel or recourse to independent judicial review. Such measures are inconsistent with international human rights standards; they also significantly increase the risk of torture and other ill-treatment and preclude accountability where such violations are perpetrated.[70]

43. United Nations human rights mechanisms have highlighted a number of situations in which safeguards against torture and other cruel, inhuman and degrading treatment or punishment are not put in place, with particular implications in the counter-terrorism context. Torture and ill-treatment are reportedly practised by law enforcement and other security officials on a regular basis in some jurisdictions as a means to elicit confessions or obtain information, including in the counter-terrorism context, and confessions obtained under duress have been used as evidence in court.[71] The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has observed that the rise of terrorism and organized crime has given way to an increasing tolerance of violent political narratives and popular beliefs that not only trivialize torture and other cruel, inhuman or degrading treatment or punishment, but even promote and incite their use in the name of national security and the fight against terrorism.[72] A reliance on diplomatic assurances to justify the deportation of foreign nationals suspected of terrorism-related offences to countries where it is reported that they may face a real

[66] See A/HRC/28/28; and A/70/330.
[67] A/70/330, para. 73.
[68] See CCPR/C/GBR/CO/7.
[69] See, for example, CCPR/C/GBR/CO/7; CCPR/C/FRA/CO/5; CCPR/C/POL/CO/7; CCPR/C/MAR/CO/6; CCPR/C/SUR/CO/3; CAT/C/JOR/CO/3; and CAT/C/IRQ/CO/1.
[70] See A/HRC/28/28.
[71] See A/71/298; CCPR/C/IRQ/CO/5; CAT/C/LKA/CO/5; A/HRC/34/54/Add.2; A/HRC/33/51/Add.2; and A/HRC/34/53/Add.3.
[72] See A/HRC/34/54, para. 14.

risk of torture or other forms of ill-treatment also has been raised as an issue of concern.[73]

V. Conclusions and recommendations

44. The promotion and protection of human rights plays a critical role in preventing violent extremism and countering terrorism. Examples of good practice include policies and laws that combat social exclusion and marginalization as essential elements in the effective prevention and countering of violent extremism.[74] The promotion of tolerance, pluralism, inclusion and participation of all communities in a society, including through the engagement of women and youth and good-quality education based on human rights, can help to prevent extremist violence and acts of terrorism.

45. By the same token, measures to ensure respect for human rights contribute to effective counter-terrorism by serving to prevent human rights violations, uphold the rule of law and secure public trust in the justice system, through investment in institutions and processes that are accountable, effective and legitimate. Legislation, policies and programmes to counter terrorism that are designed and implemented in a manner that complies with human rights standards help to ensure accountability, while avoiding the vicious circle in which the measures taken risk exacerbating the very phenomenon they are aimed at preventing.

46. Through its active engagement on these issues, the United Nations has made important progress in addressing the wide-ranging implications for human rights of security-related policies and practices, representing an invaluable resource for risk analysis, early warning and technical cooperation, as well as providing practical guidance for States and other duty-bearers in the counter-terrorism context. The newly established Office of Counter-Terrorism is well placed to enhance coordination and coherence across the entities of the Counter-Terrorism Implementation Task Force in supporting the efforts of Member States to ensure that their counter-terrorism measures are rooted in respect for their obligations under international human rights law, as well as to encourage the Task Force and its working groups to incorporate a human rights perspective into their work.

47. Prevention must involve the adoption by States of specific measures to ensure that counter-terrorism laws, policies and practices are aligned with international law, including human rights law. Accountability for violations of international human rights law and of international humanitarian law in the context of countering terrorism should also be ensured through prompt, independent and effective investigation in order to ensure that justice is served, to provide redress to victims and to prevent further violations. To this end, Member States are recommended:

(a) To ensure that violations and abuses of international human rights law and, as applicable, international humanitarian law are prevented and/or not repeated, including through the prompt, thorough, independent and impartial investigation of alleged violations and abuses, as well as the prosecution and punishment of perpetrators in accordance with international human rights standards;

[73] See CCPR/C/GBR/CO/7.
[74] See A/HRC/33/29.

(b) To ensure respect for the rights of victims to reparation, truth and justice, in line with international human rights standards. States should consider the sharing of lessons learned and good practices in this regard, including national legislation, compensation, rehabilitation and assistance schemes and studies in order to better protect and promote the human rights of victims;

(c) To ensure that national counter-terrorism legislation is limited to the countering of terrorism as properly and precisely defined on the basis of the provisions reflected in the international counter-terrorism instruments, with strict adherence to the principle of legality;

(d) To undertake a regular review to ensure the compliance of national counter-terrorism laws and practices with international human rights standards, including those related to due process, such as the right to a fair trial, the rights to freedom of opinion, expression, peaceful assembly and association, and the right to privacy, in order to ensure that counter-terrorism measures are specific, necessary, effective and proportionate. This may involve reviewing counter-terrorism legislation before its adoption, incorporating time limitations into such laws, establishing procedural safeguards and independent oversight bodies for law enforcement and intelligence agencies and conducting periodic reviews of sanction measures. The validity of any exceptional measure should be restricted in time through the inclusion of a sunset clause;

(e) To take further steps towards the prevention of torture and other cruel, inhuman and degrading treatment or punishment through the adoption of laws prohibiting their use and providing for the prosecution of those who violate such laws; ratify the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; and implement procedural safeguards, such as registers in places of detention and video recordings of interrogations, and ensure independent oversight, including regular monitoring of places of detention by independent bodies;

(f) To ensure that adequate procedural safeguards and oversight of interception and surveillance are in place and establish prior judicial authorization of surveillance as the norm;

(g) To provide for oversight and accountability in international counter-terrorism cooperation, including through the extension of external oversight to ensure that cooperation between law enforcement, investigative officials and intelligence services does not result in a weakening of human rights protection;

(h) To ensure that national and regional plans of action to prevent violent extremism are consistent with their international human rights obligations and aligned with relevant national human rights action plans;

(i) To enhance financial and political support for the capacity-building initiatives of the United Nations under all four pillars of the Global Strategy in a balanced manner, which would then benefit measures to ensure the respect for human rights for all and the rule of law as the fundamental basis for the fight against terrorism.